87-1371

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JAVIER ANTONIO RIVERA, PETITIONER

VS.

THE STATE OF TEXAS, RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE
FOURTEENTH COURT OF APPEALS
OF THE STATE OF TEXAS

CHARLES RICE YOUNG
3401 Louisiana
Suite 220
Houston, Texas 77002
713/520-1719
TBN: 22174500
ATTORNEY FOR
PETITIONER,
JAVIER ANTONIO RIVERA

QUESTION PRESENTED

1. Does the search of the Petitioner's residence located in the City of La Porte, Texas, by police of the City of Pasadena, Texas, violate the Petitioner's rights to be free of unreasonable searches and seizures and the Petitioner's right to due process of law?

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NO. _____

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JAVIER ANTONIO RIVERA, Petitioner

VS.

THE STATE OF TEXAS, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE FOURTEENTH COURT OF APPEALS OF
THE STATE OF TEXAS

Petitioner prays that a writ of certiorari issue to review the judgment of the Fourteenth Court of Appeals of the State of Texas, filed April 30, 1987. The Texas Court of Criminal Appeals refused to accept a Petition for Discretionary Review of the opinion and judgment of the Fourteenth Court of Appeals of the State of Texas on October 14, 1987.

CITATION TO OPINIONS BELOW

The Court of Criminal Appeals refused Petitioner's Petition For Discretionary Review by unpublished Order dated October 14, 1987 under Case Number 0646-87. The official notice is attached as Appendix "A". The opinion and judgment of the Fourteenth Court of Appeals, although unpublished at this time, was filed April 30, 1987 under Case Number B14-86-893-CR and is attached as Appendix "B".

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3), Petitioner having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involved the Fourth and Fourteenth Amendments to the Constitution of the United States.

2. This case also involved Tex. Code Crim. Proc. Ann. art. 2.13 (1965) and Tex. Const. art. I, sec. 9, provisions of Texas law.

STATEMENT OF THE CASE

Petitioner is accused of intentionally and knowingly possessing a controlled substance (cocaine). The Petitioner presented a motion to suppress which was denied by the Court. Petitioner pleaded nolo contendre pursuant to a plea agreement and the Court granted permission to appeal the suppression issue. The Petitioner was found guilty and the Court assessed punishment at six (6) years in the Texas Department of Corrections, suspended

and probated for six (6) years and fine of $1,500.00.

ARGUMENT

The Petitioner's Motion to Suppress should have been granted because the officers conducting the search and investigation did not have jurisdiction to search and arrest outside of the City of Pasadena.

The Court of Criminal Appeals has long held that the authority of a policeman is restricted to the limits of his city. The Court first addressed this issue in Weeks v. State, 132 Tex.Cr.R. 524, 106 S.W.2d 275 (Tex.Cr.App. 1937). There, two city policemen arrested the defendant and searched her car at a point about 100 to 150 yards beyond the city limits. The Court noted that, "Under the common law a policeman's authority is confined to the limits of the city unless such authority is extended by

legislative act." Id., at 275.[1] The Court, therefore, found the arrest and search illegal and the fruits thereof inadmissible. The Court took special note of Article 999, which was construed as "limit(ing) the legal authority of peace officers to their own bailiwick." Id., at 276.

The Court next addressed this issue in Irwin v. State, 147 Tex.Cr.R. 14, 177 S.W.2d 970 (Tex.Cr.App. 1944). There, several Houston police officers executed a search warrant at a point in Harris County that was outside the city limits of Houston. The Court first determined that the commissions as "special deputy sheriff" of

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1. The Texas Court of Criminal Appeals has judicially expanded warrantless arrest authority for municipal police to include the entire county. Angel v. State, ___ S.W.2d ___ (Tex. Crim. App. No. 912-85, 10-7-87).

Harris County carried by two of the officers were invalid. Furthermore, the Court held:

> "In order for the searches to be legal, Officers Eubanks and Martindale, or either of them were required to be deputies sheriff, because they could not have executed the warrants or made the searches thereunder, as policemen, outside the limits of the City of Houston, their territorial jurisdiction as policemen being restricted to the confines of that city."

Id., at 973. Thus, the Court determined that the search was illegal and the evidence obtained thereby had been improperly admitted.

The Court addressed this issue for a third time in Buse v. State, 435 S.W.2d 530 (Tex.Cr.App. 1968). There, the Defendant attempted to sell barbiturates to the night manager of a service station in Houston. A few minutes after the defendant left the service station, the night manager gave two Houston police officers a description of

the defendant and his automobile and the direction in which he was traveling. After crossing into the city limits of Bellaire, the Houston officers found the defendant's car. Shortly thereafter, they observed the Defendant approaching his car carrying illegal barbiturates in plain view. They thereupon arrested the defendant and seized the drugs. The Court held that, "the arrest and search of appellant by the city officers outside the jurisdictional limits of the city of Houston was unlawful," and that the fruits of the search should have been suppressed. Id., at 532. The Court noted in dicta that the arrest occurred prior to the effective date of an amendment to Tex. Code Crim. Proc. Ann. art. 14.01 (1967), which allowed an officer to arrest without warrant for an offense committed "within his view."

The Court of Criminal Appeals has carved a narrow exception to the rule that the authority of a police officer is confined to the limits of his city. The exception is not applicable to the case at hand. This exception involves the doctrine of hot pursuit. Thus, in Minor v. State, 153 Tex.Cr.R. 742, 219 S.W.2d 467 (Tex.Cr.App. 1949), two Dallas policemen observed the defendant in the process of committing a burglary in the city limits of Dallas. They pursued the defendant at speeds in excess of 80 miles per hour and finally captured the defendant at a point beyond the city limits. The Court upheld the arrest. In the instant case, there was not hot pursuit from within the city limits of Houston. See also Watson v. State, 466 S.W.2d 783 (Tex.Cr.App. 1971).

In Buse v. State, supra, the Court suggested that, by virtue of Tex. Code Crim.

Proc. Ann., art. 14.01(b) (1967), a police officer had the authority to make an arrest outside of his jurisdiction for any offense committed within his view. This suggestion was, however, rejected in Christopher v. State, 639 S.W.2d 932 (Tex.Cr.App. 1982). There, the court reasoned that Chapter 14 of the Code of Criminal Procedure, "delineates the circumstances under which no warrant is required for an arrest." Id., at 937. Thus, Art. 14.01(b), supra, and, indeed, all of Chapter 14, was only intended to define the circumstances under which a peace officer might make a warrantless arrest within his jurisdiction. To construe the statute otherwise would give all peace officers state-wide jurisdiction. The Court rejected this notion, stating, "(w)e do not believe the legislature intended such a result." Id. In Rozell v. State, 662 S.W.2d 634, 636-

637 (Tex.App. 14th Dist. 1983 no PDR history), that Court stated:

> "It is well-settled that this grant of authority to peace officers is limited by the phrase 'within his jurisdiction.' See Irwin v. State, (supra). The police officers present at appellant's arrest were from Houston and Spring Valley, Texas. Their authority was restricted to the territorial limits of the two cities."

In Love v. State, 687 S.W.2d 469 (Tex.App.-Houston (1st) 1985 pet. refused), that Court held that Pasadena police officers who left the city of Pasadena and entered the city of Houston, unaccompanied by any officer having either county-wide or state-wide jurisdiction, were without authority to make a warrantless arrest outside the territorial limits of the city of Pasadena. The Fourteenth Court of Appeals recently reached the same conclusion in Shrimplin v. State, ___ S.W.2d ___ (Tex.App. No. B14-85-089-CR,

April 24, 1986) (not yet reported). Thus, the case law seems to state that Officer King, in the present case, was completely without authority when he conducted a search and seizure of Defendant outside the territorial imits of the City of Pasadena.

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

For reasons involving the Fourth and Fourteenth Amendments to the United States Constitution the Court of Criminal Appeals should have found that Pasadena City Police did not have jurisdiction to execute a search warrant in another municipality.

Petitioner's brief to the Court of Appeals and Petitioner's Application for review by the Court of Criminal Appeals requested the respective courts to find that for reasons grounded in the due process clause of the Fourteenth Amendment, the Petitioner's Motion to Suppress should have

been granted. The Petitioner's Fourth and Fourteenth Amendment claims were rejected by the Court of Appeals in affirming the trial court and by the Court of Criminal Appeals in rejecting the application for discretionary review.

REASONS FOR GRANTING THE WRIT

This petition for certiorari should be granted for the reason that the petitioner has been denied due process of law.

The State statute relied upon by Petitioner, Tex. Code Crim. Proc. Ann. art. 2.13 (1965) is vague and ambiguous at best. It provides, in part, as follows:

> "It is the duty of every peace officer to preserve the peace within his jurisdiction."

The Texas legislature has not provided definition for police jurisdiction.

Further, the Petitioner questions the authority of a magistrate of one municipality to issue a search warrant authorizing the police of that municipality to execute the warrant in another municipality with only the perfunctory involvement by police of the second municipality.

Petitioner is entitled to the protection, under the United States Constitution, of due process of law, i.e., to be able to rely on a statute and law of a state to provide unambiguous direction and notice. Clearly Tex. Code Crim. Proc. Ann. art. 2.13 (1965) does not provide that notice which Petitioner should be expected to rely upon. The Court of Appeals suggested that the notice of police jurisdiction (county wide as opposed to city wide) is implicit from its holding in Rozell, supra.

To the Petitioner, such notice which is absent from the statute and only implicit

in case law does not pass constitutional muster and begs for scrutiny by this Court under the auspices of the Fourteenth Amendment.

CONCLUSION

Petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

CHARLES RICE YOUNG
ATTORNEY FOR
PETITIONER,
JAVIER ANTONIO RIVERA
3401 Louisiana
Suite 220
Houston, Texas 77002
713/520-1719

DATED: DECEMBER 10, 1987
HOUSTON, TEXAS

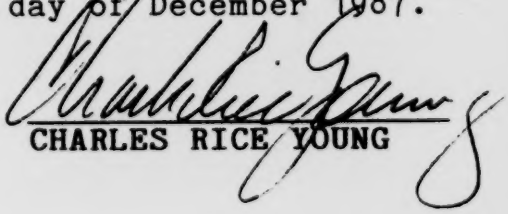
CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of December, 1987, three true and correct copies of the type written version of the above and foregoing Petition for Writ of Certiorari were delivered to John Holmes, District Attorney, and that on December 29, 1987 three true and correct copies of the printed version of the foregoing Petition for Writ of Certiorari have been delivered to John Holmes, District Attorney, at his office, to-wit: District Attorney's Building, 201 Fannin, Houston, Texas 77002.

CHARLES RICE YOUNG

CERTIFICATE OF FILING

Upon oath, I hereby state, pursuant to Rule 28.2, Rules of the Supreme Court of the United States, that the original, type written version, of the foregoing Petition for Writ of Certiorari was placed in the United States Mail, postage prepaid, addressed to the Clerk of the Supreme Court of the United States on the 10th day of December, 1987 and that 40 copies of the printed version of this Petition for Writ of Certiorari was placed in the United States Mail, postage prepaid, addressed to the Clerk of the Supreme Court of the United States on the 29th day of December 1987.



CHARLES RICE YOUNG

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Subscribed and sworn to before me by the said CHARLES RICE YOUNG on this 18th day of December, 1987.

Melanie Huff
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires:
9-15-88

MELANIE HUFF
Notary Public, State of Texas
My Commission Expires September 15, 1988

APPENDIX

OFFICIAL NOTICE

COURT OF CRIMINAL APPEALS

RE: Case No. 0646-87

STYLE: Javier Antonio Rivera

October 14, 1987

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

COA#: 14-86-00893-CR Thomas Lowe, Clerk

Court of Criminal Appeals
P. O. Box 12308, Capital Station
Austin, Texas 78711

Mail To:

Charles Rice Young
3401 Louisiana, Suite 220
Houston, TX 77002

APPENDIX "A"

Affirmed and Opinion filed Aprl 30, 1987.

JAVIER ANTONIO RIVERA, Appellant

No. B14-86-893CR VS.

THE STATE OF TEXAS, Appellee

- - - - - - - -

Appeal from the 182nd District Court
of Harris County
Trial Court No. 449316

- - - - - - - -

OPINION

Javier Antonio Rivera (appellant) was convicted of possession of a controlled substance and was sentenced to six years probation and a $1,500 fine. In two points of error, appellant claims that the that the contraband should have been suppressed because the search warrant was insufficient and the police officers were without authority to make the arrest since the warrant was executed outside their territorial jurisdiction. We overrule

appellant's points of error and affirm the judgment of the trial court.

Several police officers from Pasadena Police Department and two police officers form La Porte Police Department obtained a search warrant for appellant's residence. Appellant's residence was located in La Porte, Texas. The Pasadena officers conducted the investigation and were in charge of the arrest. Appellant attached a copy of the search warrant and affidavit to his motion to suppress. The affidavit identified the appellant as in possession of cocaine at his residence. It stated that the officer has identified the appellant and determined that he was in fact at the residence. The information was based on an unnamed source that the officer knew to be credible based upon previous transmittal of accurate information that resulted in arrests of drug offenders. The

affidavit identified the source as a user of cocaine. The officers discovered cocaine at appellant's residence. After the trial court overruled appellant's motion to suppress, appellant pleaded no contest. The trial court granted appellant the right to prosecute this appeal.

A personattacking the sufficiency of a valid search warrant must show that the warrant and affidavit is insufficient as a matter of law and must see that both are included in the record on appeal. Ortega v. State, 464 S.W.2d 876. (Tex. Crim. App. 1971). Since appellant failed to have the search warrant and affidavit introduced into evidence he has waived this point of error. Irwin v. State, 441 S.W.2d 203, 205 (Tex. Crim. App. 1968). cert. denied, 394 U.S. 973 (1969). In any event, we find that the search warrant was sufficient. Hearsay may be a basis to show probable

affidavit identified the source as a user of cocaine. The officers discovered cocaine at appellant's residence. After the trial court overruled appellant's motion to suppress, appellant pleaded no contest. The trial court granted appellant the right to prosecute this appeal.

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cause. See Hennessy v. State, 660 S.W.2d 87 (Tex. Crim. App. 1983). The affidavit indicated that the officer had verified much of the information and that the informant had provided reliable information in the past. The credibility of the informant is not destroyed merely because he was a user of cocaine. See Winkles v. State, 634 S.W.2d 289 (Tex. Crim. App. 1981). Appellant's first point of error is without merit.

Appellant complains in his second point of error that the arrest was conducted by Pasadena Police officers who were outside their territorial jurisdiction and thus, unauthorized. Absent a hot pursuit situation, a police officer's jurisdiction ends at the city limits. Love v. State, 687 S.W.2d 469 (Tex. App. -- Houston (1st Dist.) 1985, pet. ref'd); Irwin v. State, 177 S.W.2d 970 (Tex. Crim. App. 1944); but

see Lopez v. State, 652 S.W.2d 512 (Tex. App. -- Houston (1st Dist.) 1983, pet. granted) (police officers have county wide jurisdiction to make warrantless arrests); Angel v. State, 694 S.W.2d 164 (Tex. App. -- Houston (14th Dist.) 1985, pet. granted) (same). If, however, any officer present has jurisdiction during the execution of the warrant and arrest, the arrest and search are lawful. This result was implicit in Rozell v. State, 662 S.W.2d 634 (Tex. App. -- Houston (14th Dist.) 1983, no pet.), where we stated that the jurisdiction of the officers was restricted to the cities from which they were from. See also Irwin, 177 S.W.2d at 973 (stating that one of the officers must be from the jurisdiction where the arrest is made in order to make a valid arrest). Any contrary rule would unreasonably bind the hands of law enforcement. Since La Porte officers were

present at the issuance of the warrant and arrest, the search was valid. We overrule appellant's second point of error. For the reasons set forth, we affirm the judgmentof the trial court.

/s/ J. Curtiss Brown
Chief Justice

Judgment Rendered and Opinion filed April 30, 1987.

Panel consists of Chief Justice J. Curtiss Brown and Justices Robertson and Cannon.

Publish - TEX. R. APP. P. 90.